

² The Board notes that, following the March 13, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

August 17, 2019 without an appropriate offset; and (2) whether it properly denied waiver of recovery of the \$10,216.11 overpayment.

FACTUAL HISTORY

On January 29, 2008 appellant, then a 55-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that, since July 20, 2007, she had increasing severe pain in her left arm when lifting and delivering mail while in the performance of duty. She stopped work on January 29, 2008. On August 8, 2008 OWCP accepted the claim for calcific tendinitis of the left shoulder. It paid appellant wage-loss compensation on the supplemental rolls from July 1, 2008 through August 1, 2009 and on the periodic rolls as of August 30, 2009.

Effective June 30, 2008, appellant retired from the employing establishment. A notification of personnel action (Form SF-50) dated July 29, 2008 listed her retirement coverage as Federal Employees Retirement System (FERS).

In a February 13, 2017 letter, SSA advised appellant that it had overpaid \$119,490.40 in benefits for the period March 2008 through January 2017 because appellant had received FECA wage-loss compensation benefits since March 2008, which should have reduced her SSA disability benefits.

OWCP periodically requested information from SSA regarding appellant's dual FERS/SSA benefits. In an October 6, 2017 FERS/SSA dual benefits calculation transmittal form, SSA indicated that appellant was still receiving disability benefits, not age-related retirement benefits.

On August 29, 2019 OWCP received FERS/SSA dual benefit calculation transmittal form from SSA dated August 24, 2019, which indicated appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from August 2018 through December 2018. Beginning August 2018, SSA rate with FERS was \$1,464.00 and without FERS was \$629.30. Beginning December 2018, SSA rate with FERS was \$1,504.90 and without FERS was \$646.20.

In a September 5, 2019 letter, OWCP advised appellant that it recently determined that she had been receiving SSA age-related retirement benefits since August 1, 2018. It noted that SSA had confirmed that a portion of her SSA benefits were attributed to her years of federal service as an employee covered under the FERS retirement program. Appellant was advised that OWCP was required to reduce a portion of her SSA benefits if her federal service was included in her social security computation. OWCP indicated that the offset of her compensation payments would begin with her September 14, 2019 compensation payment and her revised net FECA payment every 28 days would be \$2,327.58.

On September 6, 2019 OWCP prepared a FERS offset overpayment calculation worksheet wherein it calculated appellant's overpayment from August 19, 2018 through August 17, 2019. The total overpayment was determined to be \$10,216.11. OWCP found that appellant received an overpayment in the amount of \$2,861.83 for the period August 19 through November 30, 2018 and \$7,354.29 for the period December 1, 2018 through August 17, 2019.

On September 6, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$10,216.11 had been created for the period August 1, 2018 through August 17, 2019. It explained that appellant concurrently received wage-loss compensation on the periodic rolls and SSA age-related retirement benefits for this period without an appropriate offset. OWCP found appellant without fault in the creation of the overpayment. It also forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and requested that appellant provide supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. Additionally, OWCP further notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On September 18, 2019 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She indicated that she disagreed that the overpayment occurred. Appellant also requested waiver of the recovery of the overpayment. In a September 18, 2019 letter, appellant indicated that correspondence from SSA advised that she would not receive any benefits during the same time period due to an overpayment. No additional evidence was received.

In an attached letter dated August 3, 2018, SSA noted that, beginning August 2018, appellant was entitled to SSA age-related retirement benefits because she had reached full retirement age, but was no longer entitled to disability benefits. It advised that, starting August 2018, it would, therefore, no longer reduce her SSA age-related retirement benefits because of her FECA compensation. SSA further advised that appellant's benefits for August 2018 through April 2025 would be withheld due to a prior overpayment.

A prerecoupment hearing was held telephonically on February 7, 2020. During the hearing, appellant described her household finances. The hearing representative advised throughout the hearing that she needed to submit a breakdown of her expenses along with documentation of all income, expenses, and assets listed on the Form OWCP-20. The record remained open for 30 days to afford appellant the opportunity to submit additional evidence.

On March 12, 2020 OWCP received a March 1, 2020 letter from appellant with 23 pages of financial documentation.

By decision dated March 13, 2020, the hearing representative finalized the preliminary overpayment determination that a \$10,216.11 overpayment of compensation was created for the period August 1, 2018 through August 17, 2019 because appellant concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The hearing representative denied waiver of recovery of the overpayment as appellant had not submitted any of the requested documentation of household income, expenses, and assets along with the Form OWCP-20. The hearing representative required recovery of the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.³ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁴

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁵ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not established that appellant received an overpayment of compensation for the period August 1, 2018 to August 17, 2019.

In a February 13, 2017 letter, SSA advised appellant that it had overpaid \$119,490.40 in benefits for the period March 2008 through January 2017. In a letter dated August 3, 2018, SSA noted that, beginning August 2018, appellant was entitled to age-related retirement benefits because she reached full retirement age. However, SSA further advised that appellant's age-related retirement benefits for August 2018 through April 2025 would be withheld due to the prior overpayment.

The case record reflects that she was not actually in receipt of dual SSA age-related retirement benefits and FECA benefits during the period August 1, 2018 to August 17, 2019.⁷

Accordingly, the Board finds that OWCP has not established that appellant received an overpayment of compensation during the period August 1, 2018 to August 17, 2019.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see A.P.*, Docket No. 19-1671 (issued February 22, 2021); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation.

ORDER

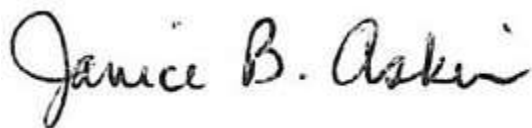
IT IS HEREBY ORDERED THAT the March 13, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 19, 2022
Washington, DC



Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board



Janice B. Askin, Judge
Employees' Compensation Appeals Board